

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROL LYNN DELONG

Claimant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF-INSURANCE FUND

Insurance Carrier

Docket No. 1,031,778

ORDER

STATEMENT OF THE CASE

Claimant requested review of the May 7, 2010, Post-Award Medical Award entered by Administrative Law Judge Rebecca A. Sanders. Jeff K. Cooper, of Topeka, Kansas, appeared for claimant. Bryce D. Benedict, of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent). The Board placed this appeal on its summary calendar for a determination without oral argument.

The Administrative Law Judge (ALJ) denied claimant's request for payment of medical bills attached as Exhibit 1 to the transcript of the Post-Award Medical Hearing. Further, the ALJ named Dr. Zhengyu Hu as claimant's authorized physician for pain management and Dr. Shawn Moore as claimant's authorized physician for treatment and monitoring of claimant's spinal cord stimulator.

The Board has considered the record and adopted the stipulations listed in the Post-Award Medical Award.

ISSUES

Claimant contends the ALJ erred in appointing Dr. Moore as the authorized treating physician for monitoring and maintaining claimant's dorsal column stimulator as he is no longer providing her with satisfactory medical care. Claimant, therefore, asks the Board

to order respondent to provide her with a list of three physicians who are qualified and experienced in monitoring and maintaining a dorsal column stimulator so she may choose one to be her authorized treating physician for this purpose. Claimant further asks the Board to order respondent to pay the medical expenses attached as Exhibit 1 to the transcript of the Post-Award Medical Hearing. Claimant contends she was referred to her primary care physician by Dr. Moore, so the medical expenses should be ordered paid as authorized medical. Claimant does not dispute the appointment of Dr. Hu as her authorized physician for pain management.

Respondent argues that claimant's dorsal column stimulator has been monitored and adjusted by Medtronic, and claimant failed to offer evidence that such monitoring was deficient. Respondent further contends that Dr. Moore did not refer claimant to her primary care physician for treatment of her work related back condition and also that any refusal by Dr. Moore to treat claimant was limited to her unrelated hip complaints. Accordingly, respondent asks the Board to affirm the ALJ's Post-Award Medical Award in its entirety.

The issues for the Board's review are:

(1) Does the evidence show that Dr. Shawn Moore has and/or is failing to provide claimant with satisfactory care in the monitoring and maintenance of her dorsal column stimulator?

(2) Should respondent be ordered to pay the bills for medical treatment attached as Exhibit 1 to the transcript of the Post-Award Medical hearing as authorized medical?

FINDINGS OF FACT

Claimant injured her low back while working for respondent on August 10, 2005. In March 2008, Dr. Ian Kucera placed a dorsal column stimulator in her back to control her back and leg pain. On February 5, 2009, an Award was entered finding that she sustained a 5 percent impairment to the body as a whole as a result of the work-related accident, which aggravated her preexisting low back condition. In the Award, Dr. Shawn Moore was authorized to provide monitoring and maintenance of the dorsal column stimulator, and "[f]uture medical will be considered upon proper application."¹

Claimant was given a card with a phone number she calls when the stimulator needs an adjustment. She said that whenever she needs adjustments on the stimulator, she goes to Dr. Moore's or Dr. Kucera's office, where someone from Medtronic makes the adjustments. Claimant admitted that Medtronic has continued to make those adjustments as needed.

¹ ALJ Award (Feb. 5, 2009) at 4.

Claimant testified that later in 2009, she began having hip pain, so she called Dr. Moore's office. She spoke with someone named Denise. Denise called claimant back later and said Dr. Moore did not want to see her and told her to see her personal care physician. Claimant said she told Denise her problem was related to her workers compensation injury, but Denise told her Dr. Moore did not want to see her and that she was not to call back. Claimant testified:

I started having a lot of hip pain, couldn't walk very far without my hips just really hurting. So I called Doctor Moore's office, and of course I didn't get to talk to him, I talked to Denise, his secretary, and she said—she called me back and said Doctor Moore said that he does not want to see you. Go to your primary care doctor. And I said well, it's work comp related possibly and I'm supposed to come to him, and she says he does not want to see you. In fact, he told me to tell you do not call here again. You are beyond his expertise. He wants nothing to do with work comp, so do not call here no more.²

Claimant then went to see her personal care physician, Dr. Jed McKee. She told him about her hip pain, and he referred her to Dr. Joseph Mumford. Dr. Mumford took x-rays of her hips and told her she had no degeneration in her hips and he believed her hip problems were coming from her back. Dr. Mumford referred her back to Dr. McKee for further tests. The bills for the treatment provided to claimant by Drs. McKee and Mumford are attached as Exhibit 1 to the transcript of the Post-Award Medical Hearing, and claimant is asking for payment of the same by respondent.

Claimant was examined on February 9, 2010, by Dr. Zhengyu Hu at the request of respondent. Dr. Hu opined that claimant's bilateral hip pain "may be referral pain from the facet region to the hip region, but partially her pain is due to great trochanteric bursitis, which has typical symptoms and signs of increased pain with pressure and walking."³ Dr. Hu recommended claimant have great trochanteric bursitis steroid injections. For her chronic low back pain, he recommended either a Flector patch or Voltaren gel locally, along with muscle relaxers. He also stated that trigger point injections and further steroid injections could be considered.

PRINCIPLES OF LAW

In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve and

² Post Award Hearing (Jan. 14, 2010) at 10.

³ Dr. Hu's report of February 9, 2010 at 3, Stipulation by parties filed April 12, 2010.

cure the effects of the original accidental injury which was the subject of the underlying award.⁴

ANALYSIS

In the Award of February 5, 2009, claimant was awarded permanent partial disability compensation for a 10 percent impairment of function based on DRE lumbosacral Category III of the AMA *Guides* less a preexisting 5 percent impairment for a prior surgery at the L4-5 area. The Award states that “Dr. Shawn Moore is authorized to provide monitoring and maintenance of the dorsal column stimulator.”⁵ The Award does not authorize Dr. Moore to do anything else or to otherwise provide treatment for claimant’s back, hips or other complaints. To the contrary, the Award specifically provides that “[f]uture medical will be considered upon proper application.”⁶ Claimant did not seek authorization or a referral from respondent or the court for additional treatment before going to Dr. McKee and Dr. Mumford. Dr. Moore was not authorized to treat claimant beyond monitoring and maintaining her dorsal column stimulator. As such, Dr. Moore could not authorize or refer claimant to Dr. McKee for treatment of her back or hips. As Dr. McKee was not authorized, his referral of claimant to Dr. Mumford was not authorized. The ALJ’s finding that the medical bills set out in Claimant’s Exhibit 1 were not authorized is affirmed.

Claimant’s testimony that Dr. Moore’s secretary told her that Dr. Moore did not want to see claimant again for any reason, including for issues related to workers compensation and the dorsal column stimulator, is uncontradicted. Respondent is ordered to submit the names of three health care providers from which claimant may select one to be the authorized treating physician for all issues related to the dorsal column stimulator.

CONCLUSION

(1) The evidence shows that Dr. Shawn Moore has failed to provide claimant with satisfactory care in the monitoring and maintenance of her dorsal column stimulator. Respondent is ordered to provide claimant with a list of three physicians from which claimant may choose one to provide this medical treatment. The ALJ’s authorization of Dr. Hu to provide pain management is affirmed.

(2) Claimant has failed to prove that the bills in Claimant’s Exhibit 1 were for authorized medical treatment expenses. The ALJ’s denial of an order that respondent pay those expenses as authorized medical is affirmed.

⁴ See K.S.A. 2009 Supp. 44-510k(a).

⁵ ALJ Award (Feb. 5, 2009) at 4.

⁶ *Id.*

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award of Administrative Law Judge Rebecca A. Sanders dated May 7, 2010, is affirmed in part and modified in part as provided above.

IT IS SO ORDERED.

Dated this _____ day of August, 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Bryce D. Benedict, Attorney for Respondent and its Insurance Carrier
Rebecca A. Sanders, Administrative Law Judge